

No. 9/7/86-6Lab./7460.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of General Manager, Haryana Roadways, Sirsa.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 72 of 1984

between

SHRI BRIJ MOHAN, WORKMAN AND THE MANAGEMENT OF GENERAL
MANAGER, HARYANA ROADWAYS, SIRSA

Shri H. S. Smagh, A.R. for the workman.

Shri V. K. Kohli, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Brij Mohan, and the management of General Manager, Haryana Roadways, Sirsa, to this Court, for adjudication,—vide Haryana Government Gazette, Notification No. 18033—37, dated 8th May, 1984:—

Whether the termination of services of Shri Brij Mohan was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Driver since 15th July, 1976 and that the respondent chose to terminate his services,—vide order dated 25th February, 1980 on the flimsy grounds that he was framed in a case under section 279 of the Indian Penal Code, in which, he was acquitted by the Court on 30th April, 1982 and that the applicant was challaned under section 34 of the Punjab Police Act, in which, he was also acquitted by Shri Rajiv Gupta, Judicial Magistrate, 1st Class, Sirsa,—vide his order dated 23rd April, 1982. It is further alleged that the petitioner was again framed in a false case on the basis of frivolous allegations in which a farce of an enquiry was held and thereafter impugned order of termination dated 25th February, 1980 was passed, which is illegal and unlawful and so, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted in toto. Preliminary objection taken is that this reference is bad in law as no opportunity of being heard was granted to the respondent before making a reference of the dispute to the Labour Court. Further, it has asserted the correctness of the order of termination passed against the petitioner. It is further alleged that one Shri Sube Singh Conductor, who was also on duty with the petitioner on the relevant date lodged a complaint against the petitioner who was found to be correct during a domestic probe. Further, the petitioner in defence produced a medical certificate from a Private Medical Practitioner. A perusal of the same goes to show that the petitioner is a habitual drunkard. Additional plea projected is that the claim has not been properly verified.

4. On the pleadings of the parties, the following issues were framed by me on 27th July, 1984:—

1. Whether valid and proper enquiry was held before termination of services of the workman? If not, to what effect?
2. As per reference.

5. Subsequently in furtherance of the reply filed by the respondent, following additional issue was laid down for decision by me on 20th March, 1986:—

Additional Issue No. 1

Whether the reference is bad in law? OPR.

6. The petitioner himself appeared as WW-1 and the management did not produce any evidence inspite of umpteen opportunities being given.

7. Heard.

Issue No. 1

8. There is no evidence on behalf of the respondent on this issue except that Shri J. N. Goyal, Accounts Officer was examined as MW-1 and only in part his examination in chief could be recorded. The same was adjourned for the next date on the request of the Authorised Representative of the respondent. Even this witness Shri Goyal refused to identify the petitioner to be the person against whom any domestic probe was held by him. Under these circumstances, there is no difficulty in holding that no valid domestic probe was held against the petitioner before terminating his services.

Additional issue No. 2

9. There is no evidence on this issue also that before making a reference of the dispute to the Labour Court, no opportunity of hearing was afforded to the management by the appropriate authority.

Issue No. 1

10. Even from the reply filed in the Court, it is not made out as to what were the allegations against the petitioner, into which, any domestic enquiry was conducted. So, the order of termination cannot be sustained being illegal and unlawful. Admittedly no prior notice or retrenchment compensation was paid to the petitioner, though he had worked for more than four years with the respondent on the date his services were terminated. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. Full back wages have been awarded, because the demand notice was raised by him within five months of his termination. The reference is answered and returned accordingly with no order as to cost.

Dated the 21st August, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

Endorsement No. 72-84/1189, dated 5th September, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

No. 9/7/86-6Lab./7462.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana State Handloom and Handicrafts Corporation Ltd., Halwas Gate, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 159 of 81

between

SHRI DONI RAMUL, WORKMAN AND THE MANAGEMENT OF HARYANA STATE
HANDLOOM AND HANDICRAFTS CORPORATION LTD., HALWAS GATE, BHIWANI

Shri S. S. Gupta, A. R. for the workman.

Shri M. C. Bhardwaj, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Doni Ramul and the management of Haryana State Handloom and Handicrafts Corporation Ltd., Halwas Gate, Bhiwani, to this Court, for adjudication,—vide Haryana Govt. Gazette Notification ID/HSR/131/81/59743, dated 14th December, 1981 :—

Whether the termination of services of Shri Doni Ramul was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed as a Weaver with the respondent since August, 1979 and that the respondent choose to appoint him as a Expert Weaver w.e.f. 16th January, 1981 and that the respondent choose to restrain him from performing his duties w.e.f. 15th July, 1981, though his service record was blemishless and that he was never served any charge-sheet, nor any domestic enquiry was held, so, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, it is alleged that the petitioner was appointed as Weaver in the Handloom Unit of the respondent on piece wages on *ad hoc* basis and that the respondent unit at Bhiwani went into production in the month of July, 1979 and only one regular Expert Weaver was posted at that time and that the head office accorded sanction for the appointment of one more Expert Weaver,—vide its letter dated 11th December, 1980 for a period of 89 days on *ad hoc* basis or till the period a regular appointment is made and so Employment Exchange Bhiwani was approached and the petitioner also applied for the post of Expert Weaver and he was appointed as such on 16th January, 1981 and after expiry of the sanctioned 89 days, sanction was obtained from the head office for further appointment of the petitioner for three months on *ad hoc* basis which was accorded and ultimately the petitioner was relieved of his duties on 18th July, 1981 on a reference from the head office. So, it is alleged that the claim of the petitioner is absolutely untenable.

4. On the pleadings of the parties, the following issues were framed by my learned predecessor on 2nd September, 1982 :—

(1) Whether the termination of services of the workman was justified and in order ? If so, to what relief is he entitled ?

5. The petitioner himself appeared as WW-1 and the respondent examined Shri Suresh Kumar Bhatia, Project Officer as MW-1.

6. The learned Authorised Representatives of the parties heard. My findings on the issue framed are as below :—

7. Undisputedly factual position is that the petitioner was working as a Weaver with the respondent unit at Bhiwani on piece rate basis since July, 1979. He might have worked there earlier also. A regular post of Expert Weaver was created in the said Unit at Bhiwani and the petitioner was appointed as Expert Weaver on *ad hoc* basis for 89 days as per sanction accorded by the head office. An application was obtained from the petitioner, who was already employed as Weaver and there is a endorsement upon the same, which reads as under :—

“periodically examined and fit for job of Expert Weaver”.

(Sd.) . . .

15-1-81.

8. The said application is dated 15th January, 1981. The petitioner was offered the post of Expert Weaver,—vide appointment letter Ex. M-6 on *ad hoc* basis for a period of three months. He joined as such on 17th January 1981. on the expiry of the period he was again appointed for a period of three months from 18th April, 1981 or such period till a regular appointment is made or which ever is earlier. After the expiry of three months from 18th April, 1981, services of the petitioners were dispensed with without passing any formal order of termination. The contention of Shri Bhardwaj, learned Counsel of the respondent was that the petitioner's appointment as Expert Weaver,—vide appointment letter Exhibit M-6 was for a period of three months only and that the petitioner cannot avail of the benefits of his previous service when he was simply working as Weaver on piece rate basis. There is nothing on record, nor any plea was taken by the respondent in the reply filed that the post of Expert Weaver was abolished from the month of July, 1981 the date from which the petitioner was not allowed to function as such, though in the statement made by Shri Suresh Kumar Bhatia, Project Officer, who was examined as MW-1, there is an admission that the petitioner was again employed on piece rate basis in the month of December, 1981 and he remained employed as such till 15th January, 1982. In my opinion, the respondent was indulging in unfair labour practice by appointing the petitioner in dribblets adopting novel practice of giving him *denovo* appointment. On 15th January, 1981 when the petitioner was already working as Weaver with the respondent, though on piece rate basis, there is an endorsement by an officer of the respondent/unit at Bhiwani that the petitioner was fit to function as Expert Weaver, though the respondent completed formalities of calling for candidate from the Employment Exchange to fill up the vacancy of Expert Weaver and obtained from the Employment Exchange non-availability certificate. A person working on piece rate basis is a workman as defined in section 2S of the Industrial Dispute Act, 1947, as observed in 1983 Lab. I. C.

1509, *M/s. Shining Tailors v/s Industrial Tribunal, U. P.* on behalf of the petitioner reliance was also placed upon 1986 (52) *Indian Factories and Labour Reports, 1976 between Suraj Parkash Bhandari and Union of India*. In the case under reference factual position was as under :—

“The petitioner was appointed as a Welder in Central Tractor Organisation in 1950 in which post he served for nine years. On 30th October, 1971 he was served with an order, dated 14th October, 1971 by which he was re-designated as a Senior Welder in the pay scale of Rs. 170—6—240 to be effective from 1st March, 1968. Subsequently by an order dated 1st January, 1973, he was declared as surplus from this post and was relieved of his duties on the forenoon of 1st January, 1973. He was then told that he could be re-employed as a Welder in the pay scale of Rs. 110—155, in the workshop of military department of Jullundur Cantonment.”

9. Though the facts of the present case are not on all fours to the facts of the case under reference but the intention of their Lordship is very clear. In the present case the post of Expert Weaver has not been abolished, even though, in the case under reference the post of Senior Welder was declared surplus. So, the contention of Shri Bhardwaj learned Counsel of the respondent that the petitioner had not completed 240 days of actual work in the last 12 calendar months from the date his services were dispensed with is not tenable, because the petitioner's tenure as Weaver, though on piece rate basis cannot be ignored while computing 240 statutory days. Admittedly no prior notice, nor even a formal order of termination was issued to the petitioner. There is no question of payment of any retrenchment compensation as envisaged under section 25F of the Industrial Disputes Act, 1947, so, the respondent was not justified in terminating the services of the petitioner, who had already completed 240 days of actual work with the respondent and as such, the respondent was not justified in dispensing with the services of the petitioner. So, the petitioner is entitled to be reinstated.

10. On the question of back wages also, the learned Authorised Representative of the respondent contended that since the petitioner remained employed as Weaver on piece rate basis from December, 1981 to 15th January, 1982, he should not be allowed back wages for this period. Since the petitioner was left in the lurch, he could not have allowed himself to be starved and the wages earned by him from December, 1981 to 15th January, 1982 are allowed to him as solatium. He raised the demand notice within one month of his alleged termination and as such, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Dated the 21st August, 1986.

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

Endst. No. 159-81/1192, dated the 5th September, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

No. 9/7/86-6Lab./7630.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Market Committee, Pilukhera, Jind.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 57 of 1985

between

SHRI RAMESHWAR PARSHAD, WORKMAN AND THE MANAGEMENT OF M/S MARKET COMMITTEE, PILUKHERA (JIND)

Shri S. S. Gupta, A. R. for the workman.

Shri S. L. Sethi, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Rameshwar Parshad and the management of M/s Market Committee, Pilukhera (Jind) to this Court, for adjudication,—*vide Haryana Government Gazette* notification No. 15719—24, dated 15th April, 1984 :—

Whether the termination of services of Shri Rameshwar Parshad is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Peon-cum-Cattle Scarer w.e.f. 6th July, 1983 against a vacant post and all through his work and conduct remained satisfactory but the respondent choose to terminate his services unlawfully,—*vide* order, dated 21st April, 1984, though the said vacancy still exist and another person was appointed in his place, which is a clear case of favouritism and nepotism on the part of the respondent. So, he has challenged his termination being unlawful and illegal and against the provisions of section 25F of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, the claim of the workman has been controverted in toto. In a nutshell the case of the respondent is that the petitioner was employed as daily wages and as soon as the candidates sponsored by the Employment Exchange were selected services of the petitioner were dispensed with. Other allegations regarding favouritism and nepotism are denied.

4. On the pleadings of the parties, the following issue was settled for decision by me on 24th October, 1985 :—

1. As per terms of reference.

5. The petitioner in support of his claim appeared as WW-1 and the respondent examined MW-1 Shri Bharat Bhushan its Mandi Supervisor at Pilukhera.

6. Learned Authorised Representatives of the parties heard.

7. Order regarding appointment of the petitioner for 89 days was passed by the Executive Officer-cum-Secretary of the respondent committee which was dittoed by the Administrator of the Committee. The said order is dated 4th July, 1984. Original application of the petitioner is Ex. M-1, upon which, these orders were passed. Ex. M-2 is the copy of the joining report. Ex. M-3 is the photo copy of the appointment letter issued to the petitioner in the running scale of Rs. 300—5—360/8—400/10—430. Termination order is dated 21st April, 1984, which is Ex. M-6. It is recorded therein that services of the petitioner stand terminated on the appointment of one Ram Niwas. It was argued on behalf of the respondent that since the petitioner's appointment was for a temporary period on *ad hoc* basis, he has no right to hold the post with the appointment of regular candidate sponsored through the Employment Exchange. The contention is not tenable. Termination of the petitioner squarely falls within the ambit of term "retrenchment" as defined in section 2(oo) of the Industrial Disputes Act, 1947, because he had continuously worked for more than 240 days with the respondent, on the date his services were terminated and his termination could not have been made without complying with the mandatory provisions of section 25(F) of the Industrial Disputes Act, 1947. No compliance was made. So, the order of termination cannot be sustained being unlawful and illegal. His services were terminated on 21st April, 1984 and he raised the demand notice on 25th April, 1984. So, there is no delay on the part of the petitioner to raise the demand notice, copy of which, has been received alongwith the order of reference. So, the petitioner cannot be denied the benefits of back wages, and as such, he is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak,
Camp Court, Sonapat.

Dated the 7th August, 1986.

Endorsement No. 57-85/1193, dated 5th September, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak,
Camp Court, Sonapat.